Supreme Court, U.S.
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No. 94-738

In The

Supreme Court of the United States

October Term, 1994

CITY OF NEW HAVEN, *et al.*,

Petitioner,

vs.

WALTER KUNTZ,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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5 pp

QUESTION PRESENTED

Are arresting and pursuing criminal suspects "essential functions" of the job of police lieutenant, so that a partially disabled candidate is not "otherwise qualified" for the job under the Rehabilitation Act of 1973, 29 U.S.C. § 794 and the Americans With Disabilities Act, 42 U.S.C. § 12, 101, *et seq.*

STATEMENT OF THE CASE

Respondent Walter Kuntz was a sergeant in the New Haven, Connecticut Police Department. Because of his high standing on a promotional examination, he was offered promotion to lieutenant, contingent on his passing the Department physical exam. Since he had a partially disabling heart condition, the Department's physician did not clear him for full police duties. As a result, the Department refused to promote him.

Kuntz brought this action pursuant to the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.* and the Americans With Disabilities Act, 42 U.S.C. § 12,101 *et seq.*, claiming that he was "otherwise qualified" to be a police lieutenant because he could perform all the administrative functions of the job, although he could not, because of his disability, pursue criminals or make forcible arrests.

The Magistrate Judge, who heard the case by consent of the parties, found that Kuntz was "otherwise qualified" to be a lieutenant because the duties of a police lieutenant are only rarely physically strenuous. She concluded that "the 'essential functions' of the position of lieutenant in the NHPD are overwhelmingly, if not exclusively, supervisory in nature." App. 27A. As she noted, App. 25A, this conclusion differed from that reached by the Eighth Circuit in *Simon v. St. Louis County,* 935 F.2d 1082 (8th Cir. 1984), the other leading police qualification case. Accordingly, she entered judgment for the respondent.

The District Court's decision was affirmed by the Second Circuit, which found her factual conclusions well-supported by the record.

REASONS FOR DENYING THE WRIT

While this case does present the important question of the proper scope of the terms "essential functions" and "otherwise qualified" under the ADA, the writ should be denied because the decision of the Magistrate Judge was clearly correct. As the Magistrate Judge recognized, determination of "essential functions" is a fact-specific task; and she quite properly concluded that administrative work and non-contact supervision constituted the overwhelming bulk of the police lieutenant's duties, even though the petitioners presented evidence that a lieutenant might on rare occasions be called upon to perform strenuous tasks that the respondent was not qualified to perform.

Because the determination of "essential functions" is so fact-specific, this Court should not disturb the decision of the Second Circuit below, which treated this case as presenting essentially a Rule 52(a) question, which it answered by concluding that the trial court's findings were not "clearly erroneous." App. 47A. Although the claim that law enforcement officers must be qualified to pursue and arrest suspects may appear attractive, the Magistrate Judge based her contrary conclusion on a careful analysis of the whole record before her. Her ruling was clearly correct and should not be disturbed.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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